

Kunkel, Mark

From: Froelich, Brooke
Sent: Wednesday, November 23, 2011 2:00 PM
To: Kunkel, Mark
Subject: Service Contracts Revisions

Attachments: Leg Counsel Draft 11 22 11.rtf

Hi Mark,

I have received the revisions have attached them for you. Thanks for all your help.

Happy Thanksgiving



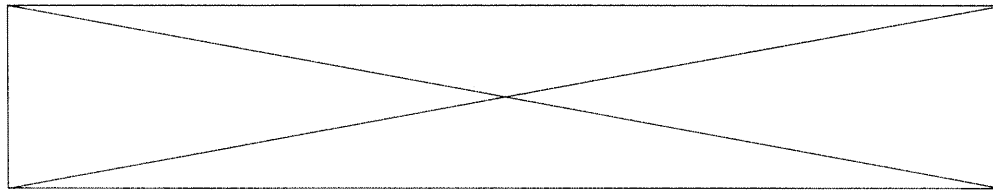
Leg Counsel Draft
11 22 11.rtf...

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2011 Special Session
2011 - 2012 LEGISLATURE



Service contracts

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ENGROSSED 2011 BILL

AN ACT *to amend* 71.45 (3) (a), 76.62 and 601.32 (1); and *to create* 100.70, 600.01 (1) (b) 12., 601.31 (1) (kr) and 632.19 of the statutes; **relating to:** regulating certain service contracts, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

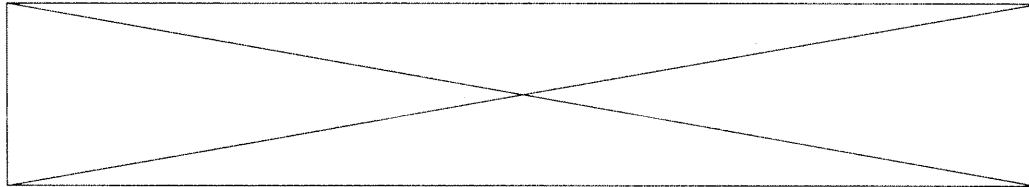
For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.45 (3) (a) of the statutes is amended to read:

71.45 (3) (a) Subject to sub. (3d), the percentage determined by dividing the sum of direct premiums written for insurance other than life insurance, with respect to all property and risks resident, located, or to be performed in this state, and assumed premiums written for reinsurance, other than life insurance, with

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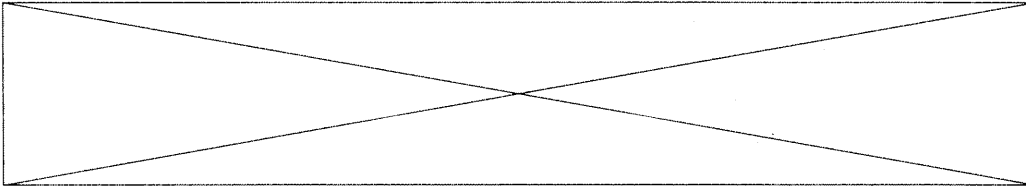
respect to all property and risks resident, located, or to be performed in this state, by the sum of direct premiums written for insurance on all property and risks, other than life insurance, wherever located, and assumed premiums written for reinsurance on all property and risks, other than life insurance, wherever located. In this paragraph, "direct premiums" means direct premiums as reported for the taxable year on an annual statement that is filed by the insurer with the commissioner of insurance under s. 601.42 (1g) (a), including premiums paid for reimbursement insurance policies, but not including fees collected on service contracts. In this paragraph, "assumed premiums" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on an annual statement that is filed with the commissioner of insurance under s. 601.42 (1g) (a).

****NOTE: The above modifies the definition of direct premiums used to compute income and franchise taxes imposed on insurers under subchapter VII of chapter 71. Is this consistent with your intent? Please note that, for Wisconsin tax purposes, it is appropriate to put tax modifications in the tax chapters and not in other chapters that are not tax-related. (Joseph Kreye)

I THINK THIS IS FINE AS IT MAKES CLEAR THAT THE INSURANCE PREMIUMS ARE SUBJECT TO PREMIUM TAX BUT THAT THE MONEY PAID FOR THE SERVICE CONTRACT IS NOT WHICH IS THE INTENT OF THE BILL.

SECTION 2. 76.62 of the statutes is amended to read:

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76.62 License fees; calculation of. All license fees and taxes levied under any provision of law upon gross premiums other than life insurance premiums against any insurer shall be uniformly calculated on the amount of gross premiums received for direct insurance less return premiums and cancellations and returns from savings and gains on all insurance other than reinsurance by the insurer during the preceding year in this state. For purposes of this section, "gross premiums" include premiums for reimbursement insurance policies, but do not include fees collected on service contracts.

****NOTE: The above modifies the definition of gross premiums used to compute license fees imposed on insurers under subchapter III of chapter 76. Is this consistent with your intent? Please note that, for Wisconsin tax purposes, it is appropriate to put tax modifications in the tax chapters and not in other chapters that are not tax-related. (Joseph Kreye)

I THINK THIS IS FINE AS IT MAKES CLEAR THAT THE INSURANCE PREMIUMS ARE SUBJECT TO PREMIUM TAX BUT THAT THE MONEY PAID FOR THE SERVICE CONTRACT IS NOT WHICH IS THE INTENT OF THE BILL.

SECTION 3. 100.70 of the statutes is created to read:

100.70 Service contracts. (1) DEFINITIONS. In this section:

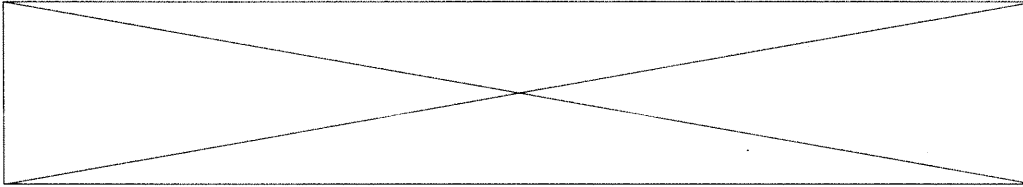
(a) "Administration" includes any of the following activities performed on behalf of a service contract provider:

1. arranging or disapproving claims, paying claims or controlling the claims adjustment process;

✓

✓

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2. arranging for or the controlling of the purchase of insurance associated ✓
with the offering of service contracts; or

3. maintaining records or submitting filings on behalf of a provider ✓
required by this section.

INCLUDED AT THE REQUEST OF OCI.

(b) "Administrator" means a person appointed by a provider under sub. (3)

(a) to be responsible for any or all of the administration of service contracts and
compliance with the section.

****NOTE: I revised the above to use the same language as in proposed s. 100.70 (3) (a). You want instead to say that an administrator is a person appointed by a provider "to be responsible for the administration of the service contracts or the service contracts plan or who is responsible for any submission required under this section." Note that the term "service contracts plan" or "plan" is not otherwise used in this bill. Therefore, it would be confusing to use the term in the above. As for "any submission required under this section," what submissions are you referring to? The only thing that the bill requires a provider to submit is an application for registration to OCI. If the above does not satisfy your intent, please clarify your intent so that I can draft something that accomplishes your intent. (Mark Kunkel)

THIS WORKS FINE BUT I THINK A DEFINITION OF ADMINISTRATION
WOULD BE HELPFUL WHICH I HAVE ADDED ABOVE. ✓

(c) "Commissioner" means the commissioner of insurance.

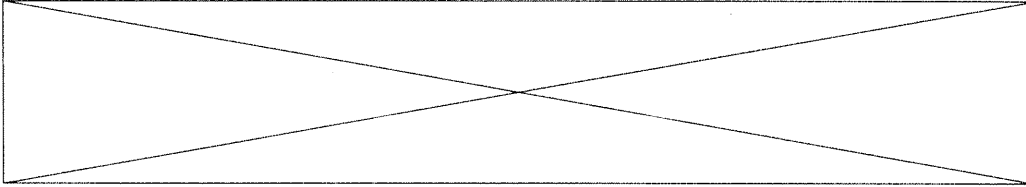
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(d) "Consumer" means an individual who buys other than for purposes of

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resale any tangible personal property that is distributed in commerce and that is

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normally used for personal, family, or household purposes and not for business or research purposes.

(e) "Maintenance agreement" means a contract of a specified duration that provides for scheduled maintenance only and does not include repair or replacement.

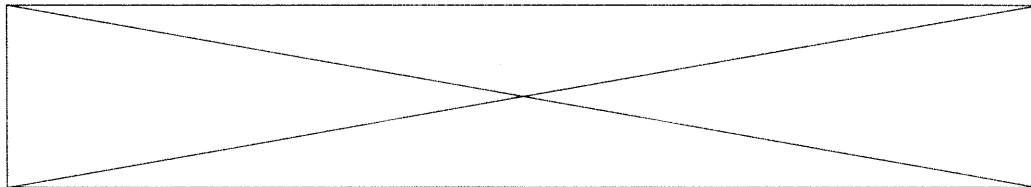
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(f) "Motor vehicle manufacturer" means a person that does or satisfies any of the following:

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1. Manufactures or produces motor vehicles and sells motor vehicles under its own name or label.
2. Is a subsidiary of the person who manufactures or produces motor vehicles.
3. Is a corporation which owns 100 percent of the person who manufactures or produces motor vehicles.
4. Does not manufacture or produce motor vehicles, but sells motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles.
5. Manufactures or produces motor vehicles and sells motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles.

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6. Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person who manufactures or produces motor vehicles and who sells motor vehicles under the licensor's trade name or label.

(g) "Nonoriginal manufacturer's parts" means replacement parts for property that are not made for or by the original manufacturer of the property.

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(h) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

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(i) "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.

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(j) "Provider fee" means the consideration paid for a service contract.

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(k) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider or administrator's nonperformance, to pay on behalf of the provider or administrator all covered contractual obligations under the terms of the insured service contracts issued or sold by the provider.

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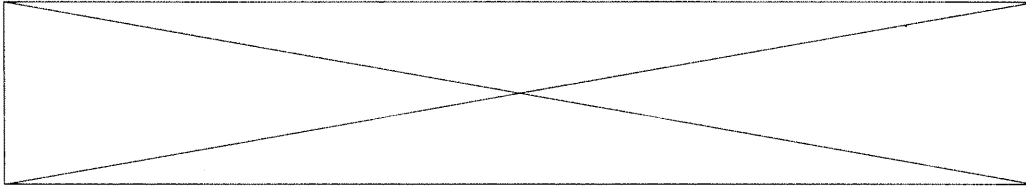
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(l) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or

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maintenance of property, or to provide indemnification for the repair, replacement, or maintenance of property, for the operational or structural failure of property, due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection. "Service contract"

includes a contract or agreement that provides for any of the following:

****NOTE: Please review the above reference to "the operational or structural failure of property." It appears that your suggested revision has a typo, so I want to make sure that the above reference is okay. (Mark Kunkel)

YOUR REVISIONS ARE FINE.

****NOTE: In the prior version of the bill, I pointed out that I use the term "includes" in the bill, rather than "includes, but is not limited to." Note that s. 2.01 (1) (i) of the LRB's drafting manual provides: "The term 'includes' conveys a meaning of nonexclusiveness and allows a court or administering agency to adopt additional meanings; using 'means' restricts them to reasonable constructions of your wording. Do not use 'includes but is not limited to.' That phrase is redundant." (Mark Kunkel)

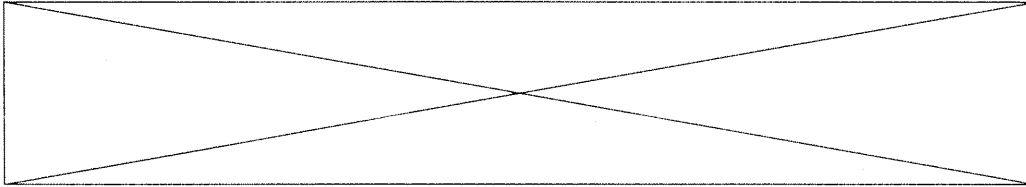
OK

1. The repair, replacement, or maintenance of property or indemnification for the repair, replacement, or maintenance of property for damage resulting from a power surge or interruption.

2. The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or

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more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented.

3. The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

4. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

5. The repair of motor vehicle windshield chips or cracks, but does not include the replacement of the entire windshield.

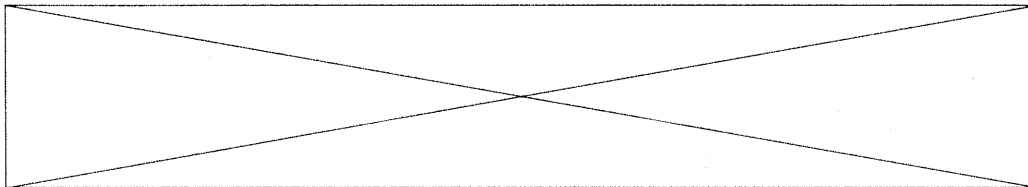
****NOTE: I revised the above to refer to "motor vehicle windshield chips or cracks," instead of "small motor vehicle windshield chips or cracks." Aren't all chips and cracks considered to be small? If so, it isn't necessary to say that they are small. Also note that I reworded the exclusion for replacement of an entire windshield (Mark Kunkel)

OK

6. The repair of damage to the interior components of a motor vehicle caused by wear and tear, but does not include the replacement of any part or component of a motor vehicle's interior.

****NOTE: I reworded the exclusion for replacement of any part or component of a motor vehicle's interior. (Mark Kunkel)

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OK

****NOTE: You have reinserted the following: "Service contracts are not insurance in this state or otherwise regulated under the insurance code." I cannot include that language here because it does not logically follow the introductory text in the last sentence of par. (k) (intro.), "Service contract' includes a contract or agreement that provides for any of the following:" Also, note that your intent is accomplished in proposed s. 100.70 (7), which I have added to the bill. (Mark Kunkel)

OK

(m) "Service contract holder" means a person who is the purchaser or holder of a service contract.

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(n) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration, that is not negotiated or separated from the sale of the product or services, that is incidental to the sale of the product or services, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

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(2) APPLICABILITY. (a) This section does not apply to any of the following:

1. Warranties as defined in sub. (1) (n) or s. 100.203 (1) (g) or 100.205 (1) (g).
2. Maintenance agreements.
3. Service contracts offered by public utilities on their devices for the transmission of public utility service to customers to the extent such service contracts are regulated by the public service commission.

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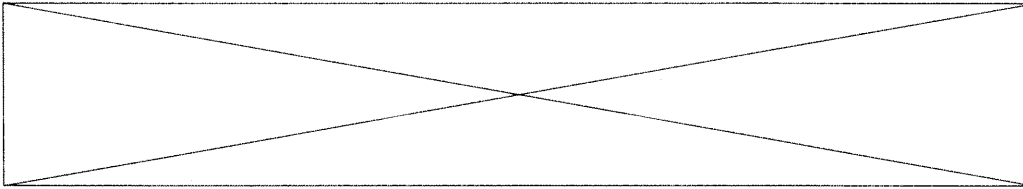
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****NOTE: I'm still confused about the intent of the above exemption and how the exemption relates to the other exemptions in subds. 1., 2., 4., and 5. If the PSC does not regulate a warranty, service contract, or maintenance agreement described above, then the above exemption does not apply to the warranty, service contract, or maintenance agreement. What about the other exemptions in subds. 1., 2., 4., and 5.? Should they still apply, or does the inapplicability of the above exemption override those exemptions? (Mark Kunkel)

I UNDERSTAND YOUR CONCERN AND I THINK MY REVISION ADDRESSES IT. THE INTENT IS THAT IF A SERVICE CONTRACT IS OFFERED BY A PUBLIC UTILITY AND THE PSC REGULATES IT THEN THEY SHOULD BE EXEMPT FROM THIS REGULATORY FRAMEWORK. I UNDERSTAND YOUR CONCERN REGARDING MAINTENANCE AGREEMENTS AND WARRANTIES AND HAVE REMOVED THOSE REFERENCES.

****NOTE: I revised the reference to "transmission devices." Is my revision okay? (Mark Kunkel)

OK

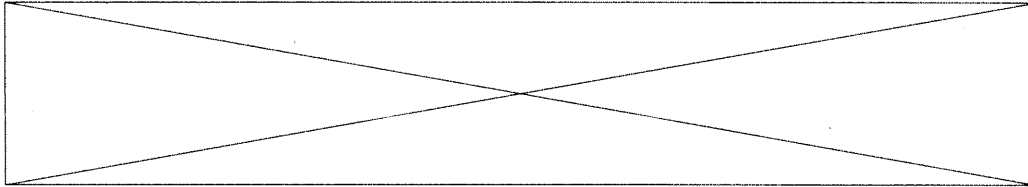
4. Service contracts sold or offered for sale to persons other than consumers.

5. Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$100 or less, exclusive of sales tax.

(b) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products are exempt from this section, except for subs. (3) (i), (4) (a) and (d) to (L), (5), and (8). and motor vehicle manufacturers offering service contracts shall not be subject to registration under sub. (3)(d).

****NOTE: The exemption from insurance regulation for warranties, maintenance agreements, and service contracts is set forth in proposed s. 100.70 (7), which I added to this bill. (Mark Kunkel)

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(3) REQUIREMENTS FOR DOING BUSINESS. (a) *Appointment of administrator.*

A provider may, but is not required to, appoint an administrator to be responsible for any or all of the administration of service contracts and compliance with this section. All administrators of service contracts sold in this state shall register with the commissioner by providing the following information:

1. The name, residence address, and other information required by the commissioner for an employee or officer of the administrator that is designated by the applicant as the person responsible for the administration of service contracts in this state:

2. The location of the administrator's home office; and

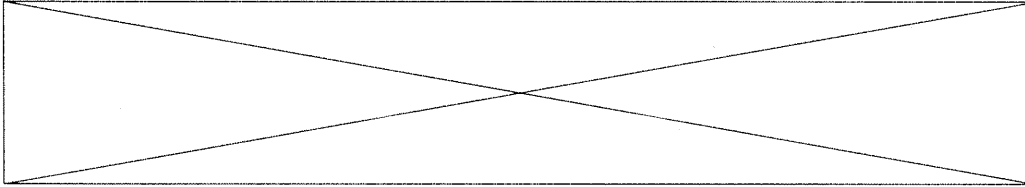
3. The names of the service contract providers who the administrator performs administration for.

(b) *Receipt and copy of contract.* A service contract may not be issued, sold, or offered for sale in this state unless the provider of the service contract has done all of the following:

1. Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder.

2. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

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(c) *Sample contract.* A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this paragraph by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet Web site containing a complete sample of the terms and conditions of the service contract.

(d) Licensure. 1. Except as provided in subd. 2., no person may act as a provider in this state unless the commissioner issues a license to the person under subd. 3.

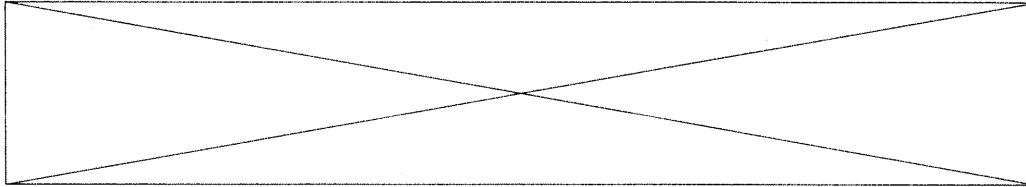
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selling service contracts

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IT IS A VERY DIFFERENT THING TO LICENSE A PERSON "SELLING"
A SERVICE CONTRACT AS OPPOSED TO LICENSING A SERVICE
CONTRACT PROVIDER. THE BILL IS DESIGNED TO LICENSE
PROVIDERS NOT SOMEONE WHO IS SIMPLY SELLING A CONTRACT.
OTHERWISE IT COULD BE READ TO REQUIRE EVERY BEST BUY OR
AUTO DEALER TO GET LICENSED SIMPLY BECAUSE THEY SOLD
THE CONTRACT WHEN THEY ARE NOT OBLIGATED TO PERFORM. IT
IS THE PARTY OBLIGATED THAT MUST BE LICENSED. THE
DEPARTMENT WANTS TO CALL IT LICENSURE AS OPPOSED TO
REGISTRATION SO I HAVE MADE THAT CHANGE THROUGHOUT.

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2. A person acting as a provider in this state on or before the effective date of this subdivision [LRB inserts date], and who, no later than the first day of the 2nd month beginning after the effective date of this subdivision [LRB inserts date], submits an application for licensure and pays an initial license fee under subd. 3. may continue to act as a provider until the commissioner takes final action on the application. For purposes of this subdivision, an action is final if the action has been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the action has expired, or if the action is not subject to judicial review.

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3. A person acting as a provider in this state shall submit an application for licensure with the commissioner consisting of the person's name, full business address, telephone number, and contact person and designate a person in this state for service of process. The person shall pay to the commissioner a fee in the amount specified in s. 601.31 (1) (kr) upon initial licensure and every year thereafter. Upon receipt of an application that complies with this subdivision and payment of the initial licensure fee, the commission shall issue a license to the applicant. The information submitted with an applicant's application for licensure need only be updated by written notification to the commissioner if material changes occur in the license application on file with the commissioner.

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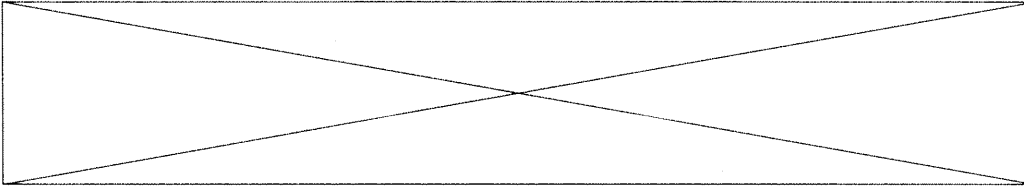
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****NOTE: I revised par. (d) to clarify that, except for persons engaged in the service contract business on or before the effective date of the bill, a person may not engage in that business unless OCI issues a registration to the person. (Mark Kunkel)

PLEASE SEE ABOVE EXPLANATION OF CHANGES. THESE CHANGES ARE IMPERATIVE SO LET ME KNOW IF WE NEED TO DISCUSS. THANK YOU.

(e) *Assurance of performance; in general.* In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements specified in par. (f) or (g).

****NOTE: I added the text, "In order to assure the faithful performance of a provider's obligations to its contract holders." However, I don't think that language has any practical significance. A provider must comply with par. (f) or (g) regardless of whether the foregoing text is included. Please be aware that including the text could have unintended consequences, as it may give a court the opportunity to interpret the requirements in a way that is inconsistent with your intent. Also note that, like the prior version of the above, this version requires a provider to comply with only one of the specified requirements. This result is achieved by use of the word "or." An intent to require compliance with all of the requirements would have been accomplished with the word "and." (Mark Kunkel)

OK

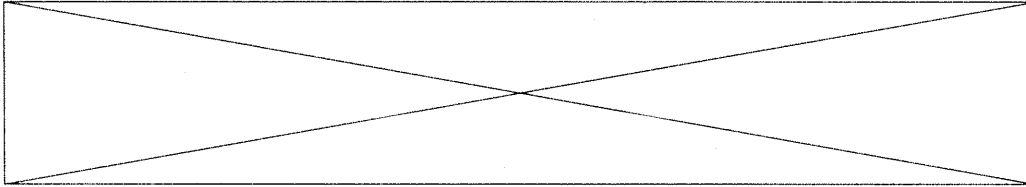
(f) *Assurance of performance; insurance.* 1. A provider may satisfy par. (e) by insuring all service contracts under a reimbursement insurance policy issued by an insurer that is authorized to do business in this state and that satisfies all of the following:

a. At the time the policy is filed with the commissioner under s. 631.20 and continuously thereafter, the insurer satisfies either of the following:

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See PJK
insert ✓

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****NOTE: I limited the filing to s. 631.20 because I'm not sure the policy is filed when rates are filed under s. 625.13. Additionally, rates must be filed within 30 days after use while forms must be filed before use, so the filings would not necessarily occur at the same time. (Pam Kahler)

OKAY.

i. Maintains surplus as to policyholders and paid-in capital of at least \$15,000,000.

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ii. Maintains surplus as to policyholders and paid-in capital of less than \$15,000,000 but at least \$10,000,000 and demonstrates to the satisfaction of the commissioner that the insurer maintains a ratio of net premiums written, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to one.

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b. The insurer annually files with the commissioner copies of all of the following:

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i. Its audited financial statements.

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ii. Its National Association of Insurance Commissioners annual statement.

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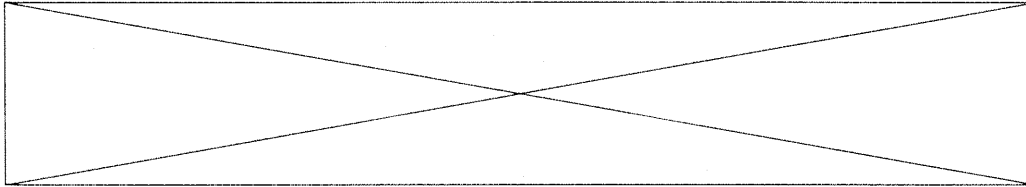
iii. Any actuarial certification required by and filed in the insurer's domiciliary state, as defined in s. 600.03 (18).

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2. If a reimbursement insurance policy utilized by a provider to satisfy the requirements of par. (e) is terminated, cancelled, or nonrenewed for any reason, the provider whose service contracts are covered by the policy shall immediately

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notify the commissioner of such termination, cancellation, or nonrenewal and cease selling service contracts in this state until the affected provider has filed with the commissioner a new reimbursement insurance policy covering its obligations under service contracts sold in the state or has provided a deposit or irrevocable letter of credit in accordance with par. (g). In addition, if a provider's reimbursement insurance policy is terminated, cancelled, or nonrenewed the commissioner may request that audited financial statements of the provider be filed. If a provider does not have audited financial statements, a provider may satisfy any such request by filing with the commissioner financial statements that are certified as accurate by a corporate officer of the provider.

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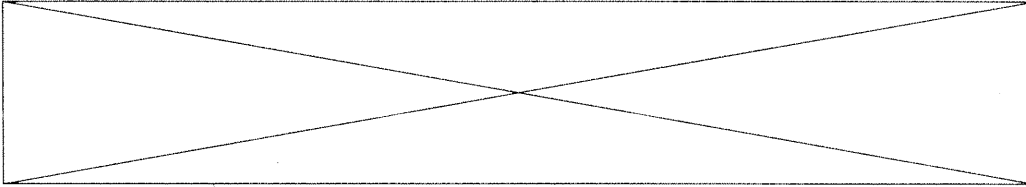
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(g) *Assurance of performance; deposit or irrevocable letter of credit.* A provider may satisfy par. (e) by providing security to compensate any service contractholder who sustains a loss due to the failure of such provider to perform its obligations under a service contract as a result of insolvency or other financial impairment. The commissioner shall approve the amount and form of the security. The security shall be in one or a combination of the following:

1. Deposit of securities under s. 601.13. The deposit of securities shall be for the benefit of Wisconsin consumers.

Deleted: net worth or financial forms
Deleted: maintaining, or together with its parent company maintaining, a net worth or stockholders' equity of \$100,000,000. Upon the request of the commissioner, the provider shall provide the commissioner with a copy of the provider's or the provider's parent company's most recent U.S. Securities and Exchange Commission form 10-K or form 20-f that is filed pursuant to 15 USC 78L (b) or (g), 78m, or 78o (d), or, if the provider or parent company does not file with the U.S. Securities and Exchange Commission, a copy of the company's audited financial statements which shows a net worth of the provider or its parent company of at least \$100,000,000. If the provider's parent company's form 10-K, form 20-f, or financial statements are used to satisfy the requirements of this paragraph, the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

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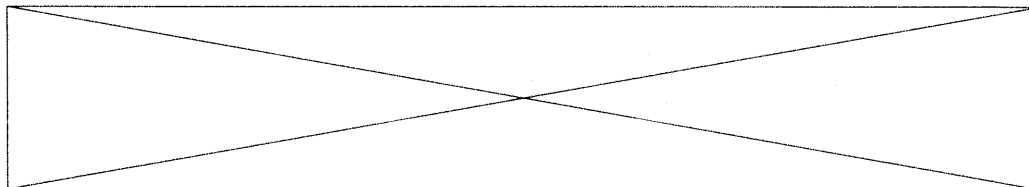


2. An irrevocable letter of credit from a bank properly chartered by the federal government or any state and that is acceptable to the commissioner and issued for a term of at least 5 years with provision for renewal 2 years before termination. The letter of credit shall be payable to the commissioner or the commissioner's designee for the benefit of Wisconsin consumers upon a finding by the commissioner that a provider is insolvent or financially impaired and unable to meet its obligations under service contracts issued in Wisconsin. The provider shall notify the commissioner in writing of the nonrenewal of a letter of credit within 30 days after receiving a notice of nonrenewal. No provider whose letter of credit has been nonrenewed may offer or sell or renew any service contract on or after the date of nonrenewal until the provider obtains security satisfying the requirements of this subsection or alternative security satisfying the requirements of sub. (f).

(3) The security prescribed in this subsection shall be not less than \$50,000 plus 22.5% of the provider fees collected from service contractholders for all unexpired service contracts in force in Wisconsin on January 1 of the current year.

MDK insert

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(4) The security shall continue until released by the commissioner pursuant to a finding that it is not necessary for the reasonable protection of Wisconsin consumers.

MOIC insert

ALL OF THE ABOVE REVISIONS ARE A RESULT OF DISCUSSIONS WITH THE DEPARTMENT AND INCORPORATE EXISTING LANGUAGE FROM ADMINISTRATIVE CODE PROVISION 15.01 AS WELL AS LANGUAGE NEGOTIATED WITH THE DEPARTMENT.

(h) *Commissioner limitation.* Except for the requirements specified in par. (e), no other financial security requirements shall be required by the commissioner for service contract providers.

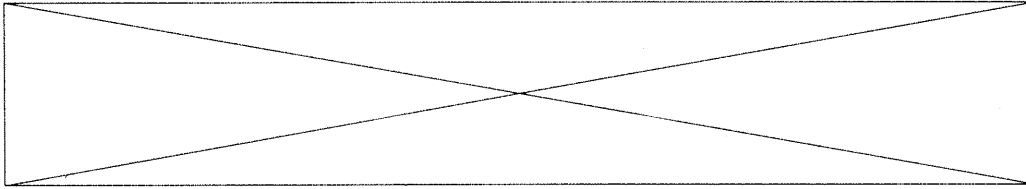
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****NOTE: I'm still confused about the above. Paragraph (d) requires a provider to register with OCI and pay initial registration and annual fees. How is that a "financial security" requirement? I think the reference to par. (d) should be deleted. (Mark Kunkel)

AGREED.

(i) *Contract return or cancellation.* 1. Service contracts shall require the provider to permit the service contract holder to return the service contract within 20 days of the date the service contract was mailed to the service contract holder, or within 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within

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the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the service contract. The right to void the service contract under this subdivision is not transferable and shall apply only to the original service contract purchaser, and only if no claim has been made prior to its return to the provider. If a provider does not pay or credit a refund within 45 days after the return of a service contract to the provider, the provider shall pay a 10 percent per month penalty which the provider shall add to amount of the refund.

2. Subsequent to the time period specified in subd. 1 for returning a service contract or, if a claim has been made under a service contract, within such time period, a service contract holder may cancel the service contract and the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid. A provider may charge a reasonable administrative fee for the cancellation, which may not exceed 10 percent of the gross provider fee paid by the service contract holder.

****NOTE: The exemption of service contracts from insurance regulation can be found in proposed s. 100.70 (7), which I added to the bill. (Mark Kunkel)

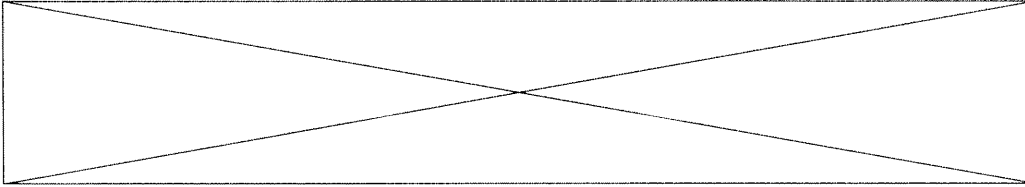
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(4) FORM FILING AND REQUIRED DISCLOSURES. (a) Service contracts shall not be marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state unless the service contract has been filed with and approved by the commissioner.

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REQUEST BY OCI

(b) Service contracts shall be written, printed, or typed in clear, understandable language that is easy to read.

(c) Service contracts shall contain the following statement printed in bold type: "This contract is subject to limited regulation by the Office of the Commissioner of Insurance."

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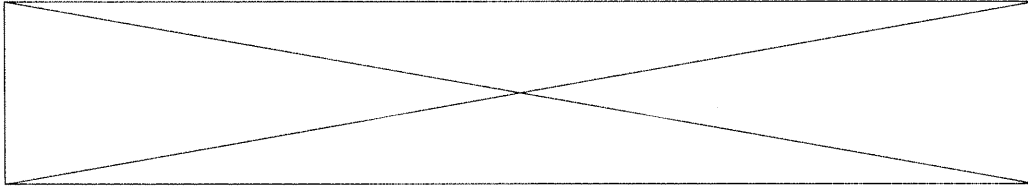
THIS IS LANGUAGE FROM OCT'S EXISTING RULE

(d) Service contracts insured under a reimbursement insurance policy pursuant to sub. (3) (f) shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also state the name and address of the insurer.

(e) Service contracts not insured under a reimbursement insurance policy pursuant to sub. (3) (f) shall contain a statement in substantially the following

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form: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

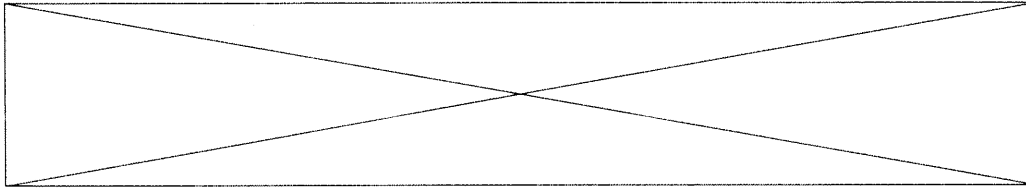
****NOTE: I understand that the above language is included in the statutes of other states, but I'm still not sure what it accomplishes. If your intent is to put consumers on notice that the above types of service contracts are not backed by reimbursement insurance, you could take the approach recommended by the Missouri Attorney General's Office, which recommended the following disclosure for motor vehicle service contracts that are not backed by reimbursement insurance: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement policy." See Missouri Auto Service Contract Task Force, *Report and Recommendations of the Office of the Attorney General of Missouri*, January 2011. (Mark Kunkel)

IT REALLY MAKES NO DIFFERENCE TO US BUT SERVICE CONTRACT FORMS ARE IN USE IN WISCONSIN TODAY THAT CONTAIN THE MODEL ACT DISCLOSURE SO WE WOULD PREFER TO LEAVE THE LANGUAGE AS IS SO NEW FORMS ARE NOT REQUIRED TO BE PRINTED. I WOULD THINK THAT "FULL AND FAITH AND CREDIT" IS A MORE COMMONLY UNDERSTOOD TERM THAN "SERVICE CONTRACT REIMBURSEMENT INSURANCE" SO I THINK ADDING THAT TERM COULD ACTUALLY CONFUSE CONSUMERS.

(f) Service contracts shall state the name and address of the provider, and shall identify any administrator that is different from the provider, the service contract seller, and the service contract holder, if the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

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(g) Service contracts shall state the total purchase price and the terms under which service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

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(h) Service contracts shall identify any applicable deductible amount.

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(i) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

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(j) Service contracts covering motor vehicles shall state whether the use of the nonoriginal manufacturers' parts is allowed.

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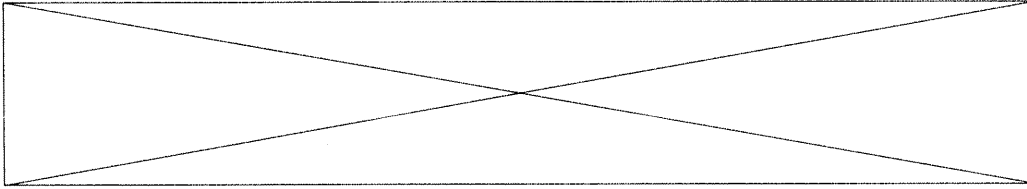
(k) Service contracts shall state any applicable restrictions governing the transferability of the service contract.

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(l) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or the service contract holder. The provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least 5 days prior to cancellation by the provider. Prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the service

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contract holder to the provider, or a substantial breach of duties by the service contract holder relating to the covered product or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation. If a service contract is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid. A provider may charge a reasonable administrative fee for cancellation, which may not exceed 10 percent of the gross provider fee paid by the service contract holder.

(m) Service contracts shall set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner's manual.

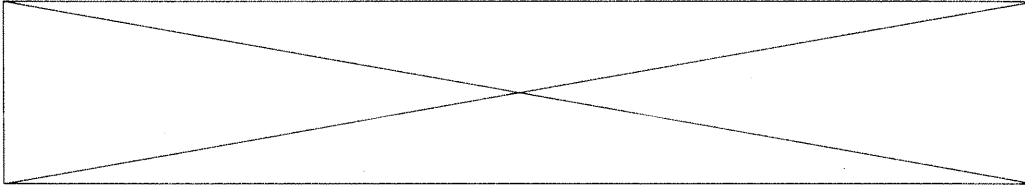
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(n) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions. Service contracts may, but are not required to, cover damage resulting from rust, corrosion, or damage caused by a noncovered part or system.

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(5) PROHIBITED ACTS. (a) 1. A provider shall not use in its name the words "insurance," "casualty," "surety," or "mutual" or any other words descriptive of the insurance, casualty, or surety business; or a name deceptively similar to the name

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or description of any insurance or surety corporation, or to the name of any other provider. The word "guaranty" or a similar word may be used by a provider.

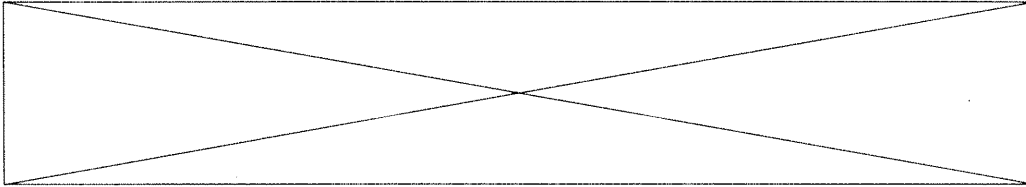
2. Subdivision 1. does not apply to a provider that was using any language prohibited under subd. 1. in its name prior to the effective date of this subdivision [LRB inserts date]. Such a provider shall include in its service contracts a statement in substantially the following form: "This agreement is not an insurance contract."

(b) A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(c) A person, including a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

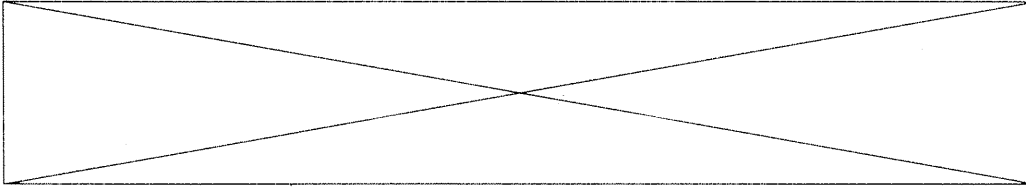
(d) A motor vehicle service contract provider or its representative shall not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive, or misleading statement with respect to any of the following:

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1. The provider's affiliation with a motor vehicle manufacturer.
 2. The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.
 3. The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.
 4. A requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty.
- (6) RECORD-KEEPING REQUIREMENTS. (a) 1. A provider shall keep accurate accounts, books, and records concerning transactions regulated under this section.
2. A provider's accounts, books, and records shall include all of the following:
 - a. Copies of each type of service contract sold.
 - b. The name and address of each service contract holder that has furnished such information to the provider.
 - c. A list of the locations where service contracts are marketed, sold, or offered for sale in this state.
 - d. Written claims files which shall contain at least the dates and description of claims related to the service contracts.

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3. Except as provided in par. (b), a provider shall retain all records required to be maintained under this paragraph for a service contract for at least one year after the period of coverage specified in the contract has expired.

4. The records required under this paragraph may be, but are not required to be, maintained on a computer disk or other record-keeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy at the request of the commissioner.

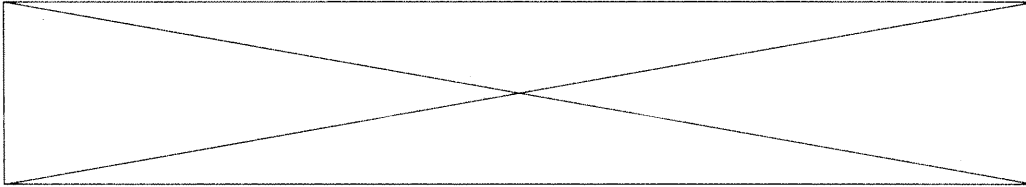
(b) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

(7) EXEMPTION FROM INSURANCE REGULATION. A person who markets, sells, offers for sale, issues, makes, proposes to make, or administers a warranty, maintenance agreement, or service contract shall not be considered an insurer, and a warranty, maintenance agreement, or service contract shall not be considered an insurance contract, for any purpose under the statutes.

****NOTE: The above is new language that I added to the bill, which I think accomplishes the intent of the exemptions in sections 1 (D) and 3 (J) of the model act.
(Mark Kunkel)

OKAY

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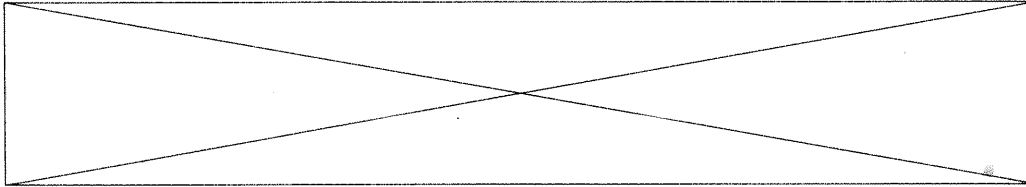


(8) ENFORCEMENT PROVISIONS. (a) The commissioner may conduct examinations of providers, administrators, insurers, or other persons to enforce the provisions of this section and protect service contract holders in this state. Upon request of the commissioner, a provider shall make all accounts, books, and records concerning service contracts sold by the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance with this section.

(b) The commissioner may take action which is necessary or appropriate to enforce the provisions of this section and the commissioner's rules and orders, and to protect service contract holders in this state.

(c) 1. If a provider has violated this section or the commissioner's rules or orders, the commissioner may issue an order directed to the provider to cease and desist from committing violations of this section or the commissioner's rules or orders; may issue an order prohibiting a service contract provider from selling or offering for sale service contracts in violation of this section; or may issue an order imposing a forfeiture that is subject to par. (e) on the provider, or any combination of the foregoing as the commission determines are applicable.

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2. A person aggrieved by an order issued under subd. 1. may request a hearing before the commissioner. The hearing request shall be filed with the commissioner within 20 days of the date the commissioner's order is effective.

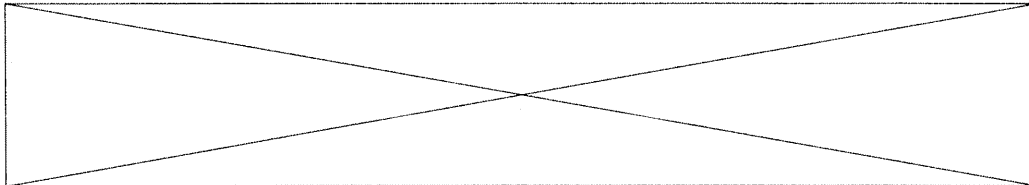
3. If a hearing is requested under subd. 2., an order issued by the commissioner under subd. 1. shall be suspended from the original effective date of the order until completion of the hearing and final decision of the commissioner.

4. At a hearing, the burden shall be on the commissioner to show why the order issued under subd. 1. is justified. Chapter 227 shall apply to a hearing requested under subd. 2.

(d) The commissioner may bring an action for an injunction or other appropriate relief to enjoin threatened or existing violations of this section or of the commissioner's orders or rules. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this section or orders or rules of the commissioner.

(e) A person who violates this section or orders or rules of the commissioner is subject to a forfeiture of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this paragraph, violations are of a similar nature if the violations consist of the

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same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to violate this section occurred.

SECTION 4. 600.01 (1) (b) 12. of the statutes is created to read:

600.01 (1) (b) 12. Providers, sellers, or administrators of service contracts under s. 100.70.

SECTION 5. 601.31 (1) (kr) of the statutes is created to read:

601.31 (1) (kr) For processing and maintaining license records under s. 100.70 (3) (d) 3., \$400 upon initial licensure and \$100 annually thereafter, unless the commission specifies a different amount by rule.

****NOTE: Because you want the bill to take effect as soon as possible, I revised the above to establish the fee amount in the statutes, which OCI may revise by rule. Under the approach taken in the prior version, OCI was required to set the amount by rule, subject to a \$200 maximum. The above approach eliminates the delay that would have resulted from rule-making. (Mark Kunkel)

I INCLUDED AN AMOUNT IN THIS LANGUAGE AS IT WAS MISSING FROM THE VERSION I WAS SENT. THIS AMOUNT IS CONSISTENT WITH WHAT OCI CHARGES WARRANTY PLANS UNDER RULE TODAY AND WOULD ENSURE WE REMAIN CONSISTENT AS FAR AS LICENSE FEES PAID TO THE STATE.

I DON'T WANT TO HANDCUFF THEM ON THIS SO WE ARE FINE LEAVING OURSELVES SUBJECT TO 601.32.

SECTION 6. 632.19 of the statutes is created to read:

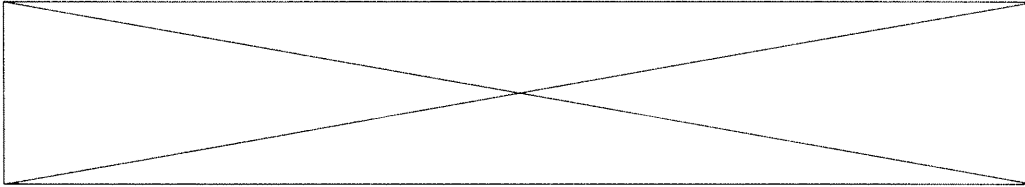
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Deleted: SECTION 6. 601.32 (1) of the statutes is amended to read: § 601.32 (1) If the moneys credited to s. 20.145 (1) (g) 1. under other sections of the statutes prove inadequate for the office's supervision of insurance industry program, the commissioner may increase any or all of the fees imposed by s. 601.31, except s. 601.31 (1) (kr), or may in any year levy a special assessment on all domestic insurers, or both, for the general operation of that program. § ****NOTE: The above prohibits OCI from increasing service contract registration fees above \$200.

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632.19 Service contract reimbursement insurance. (1) In this section:

(a) "Provider" has the meaning given in s. 100.70 (1) (h).

(b) "Service contract" has the meaning given in s. 100.70 (1) (k)

(2) (a) A reimbursement insurance policy that insures service contracts and that is issued, sold, or offered for sale in this state shall state that the insurer issuing the policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or, in the event of the provider or administrator's nonperformance, shall provide the service that the provider or administrator is legally obligated to perform in accordance with the provider or administrator's contractual obligations under service contracts issued or sold by the provider and covered under the reimbursement insurance policy.

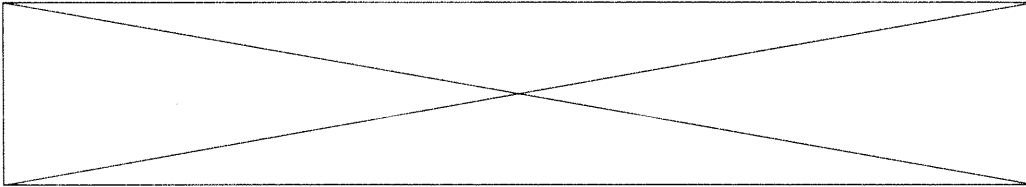
(b) A reimbursement insurance policy shall also provide that the insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the provider or designated administrator to do so.

THIS HAS BEEN INCLUDED AT THE REQUEST OF THE
DEPARTMENT.

(c) An insurer issuing a service contract reimbursement insurance policy to a provider is considered to have received the premium for that insurance policy

PJK
↓

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upon payment by a consumer of the fee for a service contract issued by the insured provider.

****NOTE: I made this language singular, which I think makes it more understandable. (Pam Kahler)

(d) If a provider does not provide, or reimburse or pay for, a service that is covered under a service contract within 60 days after a contract holder provides proof of loss, the contract holder may apply directly to the service contract reimbursement insurer for reimbursement, payment, or provision of the service.

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(e) 1. An insurer issuing a service contract reimbursement insurance policy may not terminate or nonrenew the policy in the manner provided in s. 631.36 unless the insurer has provided a notice of termination or nonrenewal to the commissioner at lease sixty (60) days prior to the termination or nonrenewal.

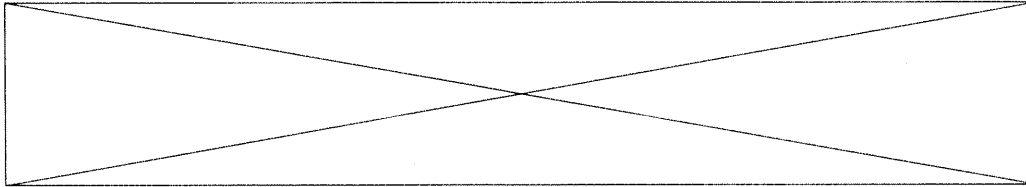
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2. The termination or nonrenewal of a provider's service contract reimbursement insurance policy does not reduce the insurer's responsibility with respect to service contracts issued by the provider before the date of the termination or nonrenewal.

****NOTE: The implication from the above language is that all reimbursement insurance policies are written to cover any claim made under any service contract that is issued while the reimbursement insurance policy is in effect. Is this the actual case? Is it possible for a reimbursement insurance policy to be written to cover only claims made under a covered service contract while the policy is in effect? If so, subd. 2. above is incorrect. Also, should "and covered under the policy" be added after "issued by the provider"? (Pam Kahler)

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THIS IS WRITTEN CORRECTLY. THE INTENT IS TO PUT THE INSURER ON THE RISK UPON RECEIPT OF THE FEES FOR A CONTRACT BY THE PROVIDER. A REIMBURSEMENT INSURANCE POLICY BY ITS NATURE COVERS CONTRACTS ISSUED WHILE THE POLICY IS IN FORCE IRRESPECTIVE OF WHEN CLAIMS ACTUALLY COME IN.

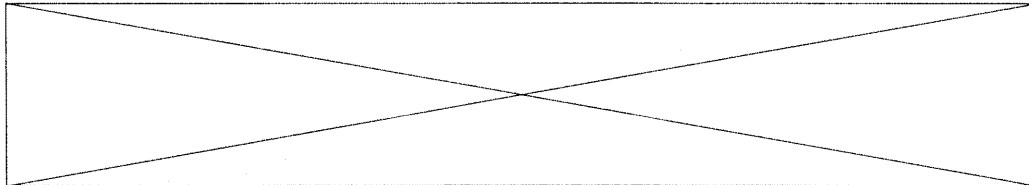
(3) Nothing in this section or s. 100.70 prevents, or limits the right of, an insurer that issued a service contract reimbursement insurance policy to seek indemnification from or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder any amount that the provider was obligated to pay under the service contract.

SECTION 8. Initial applicability.

(1) TAXES. The treatment of sections 71.45 (3) (a) and 76.62 of the statutes first applies to taxable years beginning on January 1, 2012.

I AM NOT SURE THIS LANGUAGE IS CORRECT. THIS IS HOW THESE DOLLARS ARE TREATED TODAY FOR TAX PURPOSES SO THE TAX LANGUAGE IN THIS BILL REALLY JUST CODIFIES EXISTING PRACTICE SO I AM WORRIED THAT THE LANGUAGE ABOVE COULD BE READ TO MEAN THAT PRIOR TO JANUARY 1, 2012, THE DOLLARS WERE TREATED DIFFERENTLY WHICH IS NOT THE CASE.

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(2) SERVICE CONTRACTS. The treatment of section 100.70 of the statutes first applies to service contracts that are issued, sold, or offered for sale, on the effective date of this subsection.

(3) REIMBURSEMENT INSURANCE.

(a) The treatment of section 632.19 (2) (a) of the statutes first applies to service contract reimbursement insurance policies that are issued or renewed on the effective date of this paragraph.

(b) If a service contract reimbursement insurance policy that is in effect on the effective date of this paragraph contains a provision that is inconsistent with section 632.19 (2) (b), (c), or (d) 1. or 2. or (3) of the statutes, section 632.19 (2) (b), (c), or (d) 1. or 2. or (3) of the statutes first applies to that insurance policy on the date on which it is renewed.

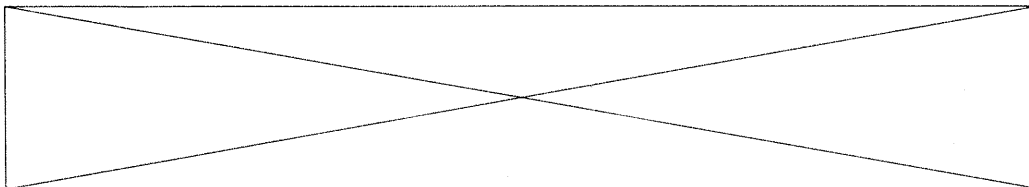
SECTION 9. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

****NOTE: The above delays the effective date by approximately 2 months after publication. (Note that the first day of the 3rd month after publication ensures a delay of at least 2 months after publication.) You indicated that you want the bill to take effect as soon as possible, but I think a short delay is advisable in order to give businesses regulated by the bill time to make changes necessary to comply with the bill. Is that okay? (Mark Kunkel)

THIS IS FINE.

ENGROSSED BILL



(END)

Parisi, Lori

From: Froelich, Brooke
Sent: Monday, January 30, 2012 12:04 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-2677/1 Topic: Service contracts

Please Jacket LRB 11-2677/1 for the ASSEMBLY.